

REMARKS

Initially, Applicant expresses appreciation to the Examiner for the courtesies extended during the recent in person interview. The amendments and remarks made by this paper are generally consistent with the proposals and amendments presented during the interview and which generally appeared to overcome all of the issues of record.¹

In the Non-Final Office Action, mailed August 16, 2007, claims 1-11 were rejected.² By this paper, claims 1-11 have been cancelled and new claims 12-27 have been added, such that claims 12-27 remain pending. Support for the new claims is derived from the previous claims, as well as the disclosure presented throughout the Specification, as generally referenced during the interview.³

Claim 12, which is the only independent claim at issue, recites a method for forming an FDIC insured banking structure that utilizes a multi-class layered limited liability organization having a pass through tax status and in such a manner as to enable profits and losses to pass through to owners under a partnership scheme and while at the same time enabling banking customers to become profit sharing members that also participate in ownership and management of the banking structure. As discussed during the interview, the unique FDIC insured banking structure recited in the claims is quite different than any structure used by either existing corporate banks or cooperative banks, such as credit unions, for example.

¹ A few additional changes to the claims and a few additional dependent claims have also been added to the proposed amendments that were discussed during the interview to further clarify the claimed invention and to promote consistency of the claim language.

² Claims 1-3 and 5-8, 10 and 11 were rejected under 35 U.S.C. § 102(e) as being anticipated by Schloss (US Patent Publication No.: 2002/0065753) hereinafter Schloss, while claims 4 and 9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Schloss in view of official notice and further in view of Mares ("The Importance of a Well-Drafted LLC Operating Agreement," article in the Tax Adviser, Aug. 1996) hereinafter Mares. It is also noted that some §101 and §112 rejections were also made. However, these rejections are now moot in view of the claim cancellations. Accordingly, it is not necessary to address them in detail at this time. It will be appreciated, however, that Applicant does not necessarily agree with the rejections. In particular, it is noted that the structure claims can be viewed as statutorily eligible claims insofar as they comprise tangible and useful structures. It is also noted that the term "makes deposits" (corresponds with making deposits into accounts) and is distinguished from "capital" (corresponding to money used to fund or back the organization of the banking structure). In view of the foregoing, the interview discussions and the claim amendments, the §101 and §112 rejections are now overcome and should be withdrawn.

³ To find support for claim 12, see paragraphs [0018]-[0019], [0034] & [0045]-[0046] and previously presented claim 1. To find support for claims 13-27, see paragraphs [0033], [0035], [0036], [0020], [0031], [0032] and [0038].

To Applicant's knowledge, no previous banking structure has ever been formed in the manner described and claimed by this application. One possible reason for this is because existing regulations do not explicitly define the banking structure that is claimed and bureaucratic hurdles can make it difficult to form any new business entity or structure that is not explicitly defined or enabled by statute. However, as mentioned during the interview and as referenced in the application, existing "corporate law and banking regulations do not exclude banks from [being formed] with this particular option." It has simply never been done before.

As further described during the interview and as recited in the claims, the unique FDIC insured banking structure that is recited in the claims is formed by first organizing a bank holding company that is designated as a limited liability company. At least one franchise bank is also organized as a limited liability company. The franchise bank is FDIC insured and is wholly owned and managed by the bank holding company. Each franchise bank is organized in such a manner as to provide banking services to the customers comprising the franchise bank members. As structured, profit sharing distributions are made to the franchise bank members and the franchise bank members are enabled to participate in management of the franchise bank(s).

A third component, comprising a chartered bank, which is also FDIC insured and organized as a limited liability company, is wholly owned and managed by the bank holding company. The chartered bank is organized in such a manner as to provide charter services to the franchise bank(s) and to provide an interface between the franchise bank(s) and the bank holding company.

Some specific implementation details regarding membership of the board in the bank holding company and the board of the franchise bank(s), as well as the specific services provided by the bank holding company and chartered bank, are detailed in dependent claims 13-23. The dependent claims also recite the different timelines that are defined by the chartered bank for the franchise banks. (see claim 16). The role certain members can play in providing capital and the designation of distributions is also claimed (claims 24-27).

With specific regard to the substantive rejections of record, it is noted that the cancelled claims were primarily rejected in view of Schloss, which discloses embodiments in which loan securities are transferred through a securities holding company to the marketplace and in such a manner as to provide an additional layer of insulation between the loan originators and the purchasers of the loan securities. As described, the purpose of Schloss is to "transfer default risk

from the [loan] originators to [the loan] purchasers and to terminate the moral recourse obligation historically imposed by rating agencies" and to thereby reduce the requirement for maintaining reserves for the loans that have already been sold. (See the Abstract and ¶¶ [0004] & [0051]).

While Schloss does generally disclose that a financing enterprise 100 can include a holding company comprising an LLC, as well as one or more other LLCs, it is noted, as discussed during the interview, that the holding company (150) of Schloss is entirely different than the bank holding company recited in the pending claims. Initially, the Schloss holding company 150 is not a bank holding company and therefore does not appear to provide the same services as attributed to the bank holding company of the present application. (see claims 13 and 14, for example).

The holding company (150) of Schloss is also not affiliated with any chartered bank LLC or franchise bank LLC, as required by the claims, particularly an FDIC insured chartered bank LLC or FDIC insured franchise bank LLC. Some additional distinctions become apparent when considering that the claimed FDIC insured franchise bank(s) must be organized in such a manner as to provide banking services to franchise bank members who receive profit sharing distributions and that are enabled to participate in management of the franchise bank(s), as claimed. Schloss clearly fails to disclose or suggest any such embodiment.

Schloss also fails to affiliate any holding company or FDIC insured franchise bank with a chartered bank, as claimed, particularly an FDIC insured chartered bank which is organized as a limited liability company that is wholly owned and managed by the holding company and which provides services to the franchise bank(s) to which the FDIC insured chartered bank operates as an interface to the holding company, and particularly as recited in combination with the other recited claim limitations.

In view of the foregoing, it is clear that Schloss fails to anticipate or render the claims obvious.

The only other cited art, Mares, fails to compensate for any of the foregoing inadequacies of Schloss. Notably, Mares was only cited for general assertions made with regard to the formation of agreements, generally, to establish which members will exercise various rights, such as contribution of capital and voting on issues involving operations, economics and board formations. While it is true that Mares identifies many issues to consider in forming agreements within an LLC, it is also clear that Mares (when considered alone and in combination with Schloss) fails to provide any disclosure or suggestion for forming any agreement or structure as claimed in the pending application.

Accordingly, for at least the foregoing reasons, as well as the other reasons presented during the recent in person interview, Applicant respectfully submits that the pending claims are in condition for prompt allowance over the cited art of record.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at 801-533-9800.

Dated this 15th day of February, 2008.

Respectfully submitted,



RICK D. NYDEGGER
Registration No. 28,651
JENS C. JENKINS
Registration No. 44,803
Attorneys for Applicant
Customer No. 22913

JCJ:ahy
AHY0000007731V001